

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W. P. (Cr.) No. 50 of 2006

Nand Kumar Pandey		...	Petitioner
	Versus		
The State of Jharkhand and others	...	...	Opp. Parties

CORAM: HON'BLE MR. JUSTICE R.R. PRASAD

For the Petitioner	: Mr. K.K. Mishra, Advocate
For the State	: A.P.P.

11/16.04.2014 This application has been filed for quashing of the order dated 23.1.2006 passed in C.G. Case No. 22 of 1994, whereby and whereunder, charges have been framed under Sections 182 and 211 of the Indian Penal Code against the petitioner.

Before advertng to the submissions advanced on behalf of the parties, the case of the prosecution needs to be taken notice of.

The fact of the case is that the petitioner had lodged a case with respect to commission of the offence under Section 395 of Indian Penal Code against some of the named accused as well as 4 to 5 unknown persons. The said case was registered as Chainpur P.S. Case No. 73 of 1993. The police after investigation did find the accusation made against the named accused to be false and hence submitted final form whereby the persons named in the first information report were exonerated from the accusation. At the same time, the police made recommendation for initiating a proceeding under Sections 182 and 211 of Indian Penal Code. Upon such recommendation, the court took cognizance of the offence under Sections 182 and 211 of Indian Penal Code vide its order dated 23.7.2001. Subsequently, when the charges were framed under Sections 182 and 211 of Indian Penal Code vide order dated 23.1.2006, the said order has been challenged.

The only point, which has been urged, is that the order taking cognizance as also the order framing charges are bad on account of the fact that the court has taken cognizance of the offence not upon a complaint filed by any court, rather on the recommendation made by the

police for initiating a proceeding under Sections 182 and 211 of Indian Penal Code and thereby the entire prosecution is hit by the provision as contained in Section 195 (1)(a)(i) & (b)(i).

As against this, learned counsel for the State submits that from the averment made in the petition, it never gets clarified as to whether the court has taken cognizance upon the complaint being filed or upon the recommendation made by the police for initiating a proceeding under Sections 182 and 211 of Indian Penal Cod.

When this submission was advanced, learned counsel for the petitioner did produce the certified copy of the order taking cognizance.

From its perusal, it does appear that the court has never taken cognizance of the offence under Sections 182 and 211 of Indian Penal Code upon a complaint being filed by any court rather cognizance has been taken on the recommendation made by the police and thereby any prosecution would be hit by the provision, as contained in Section 195 (1) (a)(i) & (b)(i) , which reads as follows:-

“195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.—(1) No Court shall take cognizance—

(a)(i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b)(i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii),

except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this

behalf, or of some other Court to which that Court is subordinate.”

From its perusal, it does appear that it is incumbent upon the court to take cognizance of the offence under Sections 182 and 211 of Indian Penal Code only upon a complaint in writing by the Court or by such officer of the Court as that Court may authorise in writing in this behalf.

But in the instant case, the court never seems to have taken cognizance of the offence under Sections 182 and 211 of Indian Penal Code upon a complaint filed by the court or by any person authorised by him, rather it seems to have taken cognizance on the basis of the recommendation made by the police and thereby the order taking cognizance as also the order framing charges suffer from illegality.

Accordingly, the order dated 23.1.2006, passed in C.G. Case No. 22 of 1994, under which charges were framed under Sections 182 and 211 of the Indian Penal Code against the petitioner, is hereby quashed.

In the result, this application stands allowed.

(R.R. Prasad, J.)

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